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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,651	10/07/2003	Billy J. Fuller	M1103.70151US00.	5108

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WOLF GREENFIELD (Microsoft Corporation)
C/O WOLF, GREENFIELD & SACKS, P.C.
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

EXAMINER
IQBAL, NADEEM

ART UNIT	PAPER NUMBER
2114	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/680,651	FULLER ET AL.
	Examiner	Art Unit
	Nadeem Iqbal	2114

-- The MAILING DATE of this communication appears on the c ver sheet with the corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 October 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Pri rity under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>Oct 7, 2003</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1, 2, 8, 13, & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by

Wisecup (U.S. Patent number 6167532).

3.   As per claims 1 & 13, Wisecup teaches (col. 1, lines 28-30) an apparatus and methods to

recover from a computer system error. With reference to a test computer network comprising at

least one test computer having a plurality of bootable partitions for controlling the at least one

test computer and a bootable system within each of the plurality of a bootable partitions, an

instance of the distributed application. He teaches (col. 1, lines 29-31). With reference to a

launcher for determining whether the bootable system is schedule to be running, and causing

another bootable system on the same test computer to boot instead if the bootable system is not

schedule to be running. He teaches (col. 1, lines 32-35).

4.   As per claim 2, With reference to each bootable system further comprises a scheduler

usable by the launcher for determining whether the bootable system is schedule to be running.

He teaches (col. 1, lines 41-43).

5.   As per claim 8, Wisecup substantially teaches the claimed invention as disclosed related

to claim 1 above. With reference to booting a selected one of the bootable partitions on, running

the instance of the distributed application of the bootable system associated with the selected

bootable partition. He teaches (col. 1, lines 29-31). With reference to a launcher for determining

whether the bootable system is schedule to be run, and causing another bootable system on the

same test computer to boot instead if the bootable system is not schedule to be running. He

teaches (col. 1, lines 32-35).

6.   As per claims 17, Wisecup teaches (col. 1, lines 28-30) an apparatus and methods to

recover from a computer system error. With reference to booting a selected one of the bootable

partitions on a test computer, running the instance of the distributed software of the bootable

system. He teaches (col. 1, lines 29-31). With reference to determining whether the bootable

system is schedule to be running, and causing another bootable system on the same test computer

to boot instead if the bootable system is not schedule to be running. He teaches (col. 1, lines 32-

35).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

8.   This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9.   Claims 3-7, 9-12, 14-16, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Wisecup (U.S. Patent number 6167532) in view of Ahrens et al., (U.S. Patent number

6823482).

10.   As per claims 3, 4 & 14, Wisecup does not explicitly disclose server information usable

by the launcher for retrieving a command file from a command server, and diagnostic data to be

sent to a diagnostic server. Ahrens et al., teaches (col. 2, lines 34-36) creating a report of detected

errors and also teaches (col. 4, lines 14-16) a remote client system that will send remote error

report to the remote service provider when an error is detected. It would have been obvious to a

person of ordinary skill in the art at the time the invention was made to include the invention of

Ahrens into the invention of Wisecup for retrieving a command file and sending diagnostic data

to a diagnostic server. This is because Wisecup already teaches to detect errors and further

teaches (col. 1, lines 39-41) to identify errors and responded to, therefore providing motivation to

a person of ordinary skill in the art for the stated inclusion.

11.   As per claim 5, With reference to diagnostic server and the command server residing on a

single computing device. Wisecup teaches (col. 1, lines 39-41) that errors occurring during the

system boot process can be identified and responded to thereby requiring a diagnostic server and

the command server to reside on a single device.

12.   As per claims 6 & 15, Ahrens et al., teaches (col. 2, lines 34-36) creating a report of

detected errors and also teaches (col. 4, lines 14-16) a remote client system that will send remote

error report to the remote service provider when an error is detected.

13.   As per claim 7, With reference to each of the at least one test computers hosts the same

number of bootable systems as each other of the at least one test computers. Wisecup teaches

(col. 5, lines 14-16).

14.   As per claims 9 & 10, Wisecup does not explicitly disclose server information usable by

the launcher for retrieving a command file from a command server, and diagnostic data to be

sent to a diagnostic server. Ahrens et al., teaches (col. 2, lines 34-36) creating a report of detected

errors and also teaches (col. 4, lines 14-16) a remote client system that will send remote error

report to the remote service provider when an error is detected. It would have been obvious to a

person of ordinary skill in the art at the time the invention was made to include the invention of

Ahrens into the invention of Wisecup for retrieving a command file and sending diagnostic data

to a diagnostic server. This is because Wisecup already teaches to detect errors and further

teaches (col. 1, lines 39-41) to identify errors and responded to, therefore providing motivation to

a person of ordinary skill in the art for the stated inclusion.

15.   As per claims 11 & 12, Ahrens et al., teaches (col. 2, lines 34-36) creating a report of

detected errors and also teaches (col. 4, lines 14-16) a remote client system that will send remote

error report to the remote service provider when an error is detected.

16.   As per claims 15 & 16, Ahrens et al., teaches (col. 2, lines 34-36) creating a report of

detected errors and also teaches (col. 4, lines 14-16) a remote client system that will send remote

error report to the remote service provider when an error is detected.

17.

18.   As per claim 18, Wisecup does not explicitly disclose server information usable by the

launcher for retrieving a command file from a command server, and diagnostic data to be sent to

a diagnostic server. Ahrens et al., teaches (col. 2, lines 34-36) creating a report of detected errors

and also teaches (col. 4, lines 14-16) a remote client system that will send remote error report to

the remote service provider when an error is detected. It would have been obvious to a person of

ordinary skill in the art at the time the invention was made to include the invention of Ahrens

into the invention of Wisecup for retrieving a command file and sending diagnostic data to a

diagnostic server. This is because Wisecup already teaches to detect errors and further teaches

(col. 1, lines 39-41) to identify errors and responded to, therefore providing motivation to a

person of ordinary skill in the art for the stated inclusion.

19.   As per claims 19 & 20, Ahrens et al., teaches (col. 2, lines 34-36) creating a report of

detected errors and also teaches (col. 4, lines 14-16) a remote client system that will send remote

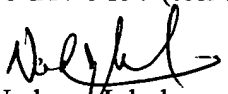error report to the remote service provider when an error is detected.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Nadeem Iqbal whose telephone number is (571)-272-3659. The

examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Scott Baderman can be reached on (571)-272-3644. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nadeem Iqbal
Primary Examiner
Art Unit 2114

NI